

Stockholm, 1 November 2004

A brief summary of Swedish legislation on public access and secrecy and comments on the effects of the legislation on communication within a law-enforcement authority.

Swedish legislation on public access and secrecy aroused great interest during the many and fruitful discussions held in recent years within the OLAF Anti-fraud Communicators Network (OAFCN) on principles of communication and information to the press. The Swedish representatives within the network were questioned about the subject and the Chairman, Mr Alessandro Buttice, himself showed a personal commitment to it. This commitment included a suggestion from Mr Buttice that the Swedish contribution to the Round Table on Anti-Fraud communication should include a description of the special requirements placed by this legislation on communication within a national law-enforcement authority.

As the information heads of the Economic Crimes Bureau and Swedish Customs, we feel that the interest shown by OLAF in Swedish openness is a very positive thing. We have therefore opted to publish our two contributions together and to adopt Swedish legislation on public access and secrecy as our common theme.

The material we have put together consists of a brief description of the most important Swedish acts and the principles underlying this topic. This description has been compiled by the Swedish Economic Crimes Bureau and forms the introduction to our presentation. The Head of Information at Swedish Customs has in the meantime added a number of observations and comments in relation to communications within Swedish Customs specifically. We hope that this compilation will lead to greater understanding of Swedish legislation and the openness of Sweden's public service towards the media and the public.

Eva-Lisa Lennstrand, Head of Information Economic Crimes Bureau :

Public access and secrecy: a comprehensive description by the Economic Crimes Bureau of some of the principal laws on openness

The principle of public access to official records and the constitution

The principle of public access – which is one of the cornerstones of the Swedish legal system – has a long tradition in the administration of justice and public administration in Sweden and means that the general public has a right to monitor the activities of the state and local authorities. This monitoring promotes the rule of law and efficiency within the administration. This freedom of expression and information which is guaranteed for every citizen is laid down in the Swedish constitution.

Freedom of the Press Act and the Secrecy Act

The Freedom of the Press Act, which is one of Sweden's fundamental laws, establishes the right to have free access to official documents. Although this right is wide-ranging it is nevertheless subject to a great many restrictions since the completely free exchange of information can damage important interests. For this reason, the Freedom of the Press Act includes a number of restrictions. The provisions which list the restrictions on the principle of public access in detail are to be found in the Secrecy Act. The Secrecy Act brings together provisions which protect certain sensitive types of information from public scrutiny and accordingly restricts the right established by the fundamental laws for everyone to have access

to information held by various authorities. The restrictions placed on the principle of public access to official documents by the Secrecy Act are permitted under the Swedish fundamental laws. There follow a number of examples of interest to law-enforcement activities.

Secrecy and law-enforcement activities

The prevention of crime is so important that it justifies imposing a restriction on the principle of public access and hence also on freedom of expression and information. Another example, also of great significance to the fight against crime, is the *protection of the personal or financial circumstances of private individuals*. In practical terms this means, for example, that secrecy applies to investigations in accordance with the provisions on preliminary investigations in criminal cases.

On the other hand some decisions in connection with preliminary investigations in criminal cases are not subject to secrecy. Decisions to open legal proceedings, not to launch a preliminary investigation or to discontinue a preliminary investigation are not subject to secrecy.

In most cases judgments do not include any confidential elements. However, if a judgment includes information of a sensitive personal nature such information can be kept secret; for example, where a judgment is for sex crimes even parts of the prosecutor's application for a summons may be subject to secrecy.

Freedom of reporting

Something should be said here about freedom of reporting. Freedom of reporting is the right, as a general rule, to communicate freely information on any subject for publication in a medium protected by the constitution (*e.g. press and broadcasting media*). This does not imply a *duty* to provide information to the media but a *right*. There are a number of restrictions on the type of information which can be provided on the basis of freedom of reporting. For example, information about secret telephone tapping and certain types of security measures may not be disclosed.

Freedom of reporting is restricted by the fact that it can only be used by an individual and not by an authority. Information issued by an authority's information department, for example by a press officer, is not protected in this way.

Provided that they do not represent an authority, anyone who provides information to an authorised recipient with a view to having the information made public in a medium protected by the constitution is entitled to invoke freedom of reporting. This means that the person in question may be held accountable for the disclosure of the information only if it violates the rules on freedom of reporting.

As regards freedom of reporting and staff working in the judicial system, it is only to be expected that such people as a rule adopt a relatively strict approach to the mass media as regards individual cases. Above all, contact with the media must not be such that the impartiality of the prosecutor or the authorities can be called into question.

The Swedish Economic Crimes Bureau and the Swedish Customs would also refer to the English version of the Swedish Government's website. Under the heading "Ministry of Justice" is a pdf-document which can be downloaded entitled "Public access to Information and Secrecy with Swedish Authorities". This document provides a more detailed description of the broad information given above. The page can be found at:
<http://www.sweden.gov.se/sb/d/2768/a/16293>